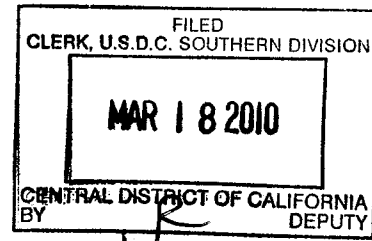


1 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY ~~ALL COUNSEL~~ PETITIONER  
2 FIRST CLASS MAIL, POSTAGE PREPAID, TO ~~ALL COUNSEL~~  
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RESPONDENT  
3 RECORD IN THIS ACTION ON THIS DATE.

4 DATED: 3-18-10

5 DEPUTY CLERK

(w/ PETITION to RESPONDENT)



6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 ELI TONEY DELRAY,

12 Petitioner,

13 vs.

14 WARDEN,

15 Respondent.  
16

) Case No. CV 10-1845-VBF (RNB)

) ORDER REQUIRING RESPONSE TO  
PETITION

17 In order to facilitate the just, speedy, and inexpensive determination of  
18 this action, **IT IS ORDERED** that:

19 1. The Clerk of this Court shall promptly (a) serve a copy of the  
20 Petition, a copy of petitioner's executed consent to magistrate judge jurisdiction form  
21 (if petitioner has filed such a consent),<sup>1</sup> and a copy of this Order on respondent and  
22 the Attorney General for the State of California, or his authorized agent; and (b) serve  
23 a copy of this Order on petitioner.

24 2. If respondent contends that the Petition can be decided without the  
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26  
27 <sup>1</sup> If respondent is also willing to consent to magistrate judge jurisdiction,  
28 the Attorney General shall execute and e-file the consent form concurrently with the  
filing of the initial response to the Petition.

1 Court reaching the merits of petitioner's claims (e.g., because respondent contends  
2 that petitioner is unable to satisfy the "in custody" requirement, or that petitioner has  
3 failed to exhaust any state remedies as to any ground for relief alleged in the Petition,  
4 or that the Petition is barred by the applicable statute of limitations), respondent shall  
5 file a Motion to Dismiss within thirty (30) days of the date of this Order.<sup>2</sup> The  
6 Motion to Dismiss shall not address the merits of petitioner's claims, but rather shall  
7 be confined to the basis for respondent's contention that dismissal without reaching  
8 the merits of petitioner's claims is warranted.<sup>3</sup> At the time the Motion to Dismiss is  
9 filed, respondent shall lodge with the Court all records bearing on respondent's  
10 contention in this regard.

11 3. If respondent files a Motion to Dismiss, petitioner shall file his  
12 opposition, if any, to the Motion within twenty (20) days of the date of service  
13 thereof. At the time the opposition is filed, petitioner shall lodge with the Court any  
14 records not lodged by respondent which petitioner believes may be relevant to the  
15 Court's determination of the Motion.

16 4. Unless the Court orders otherwise, respondent shall not file a reply  
17 to petitioner's opposition to a Motion to Dismiss. If the Motion is denied, the Court  
18 will afford respondent adequate time to answer petitioner's claims on the merits.

19 5. If respondent does not contend that the Petition can be decided  
20 without the Court reaching the merits of petitioner's claims, then respondent shall file  
21 and serve an Answer to Petition within forty-five (45) days of the date of this Order.  
22

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23 <sup>2</sup> If respondent contends that some or all of petitioner's claims are  
24 procedurally defaulted, such contention should not be made in a Motion to Dismiss,  
25 but rather should be made in an Answer to Petition which addresses the allegedly  
26 defaulted claims on the merits in the alternative.

27 <sup>3</sup> If respondent contends that petitioner has failed to exhaust any state  
28 remedies as to any ground for relief alleged in the Petition, the motion to dismiss shall  
also specify the state remedies still available to petitioner.

1 At the time the Answer is filed, respondent shall lodge with the Court all records  
2 bearing on the merits of petitioner's claims, including the briefs specified in Rule 5(d)  
3 of the Rules Governing Section 2254 Cases in the United States District Courts. The  
4 Answer shall also specifically address the necessity for an evidentiary hearing to  
5 resolve any issue.

6           6.     Petitioner may file a single Reply responding to matters raised in  
7 the Answer within thirty (30) days of the date of service thereof. Any Reply filed by  
8 petitioner (a) shall state whether petitioner admits or denies each allegation of fact  
9 contained in the Answer; (b) shall be limited to facts or arguments responsive to  
10 matters raised in the Answer; and (c) shall not raise new grounds for relief that were  
11 not asserted in the Petition. Grounds for relief withheld until the Reply will not be  
12 considered, unless the Court grants leave to amend the Petition. No Reply shall  
13 exceed twenty-five (25) pages in length absent advance leave of Court for good cause  
14 shown.

15           7.     A request by a party for an extension of time within which to file  
16 any of the pleadings required hereunder will be granted only upon a showing of good  
17 cause, and should be made in advance of the due date of the pleading. Any such  
18 request shall be accompanied by a declaration explaining why an extension of time  
19 is necessary and by a proposed form of order granting the requested extension.

20           8.     Unless otherwise ordered by the Court, this case shall be deemed  
21 submitted on the day following the date petitioner's opposition to a Motion to Dismiss  
22 and/or Reply is due.

23           9.     Every document delivered to the Court must include a certificate  
24 of service attesting that a copy of such document was served on opposing counsel (or  
25 on the opposing party, if such party is not represented by counsel). Any document  
26 delivered to the Court without a certificate of service may be returned to the  
27 submitting party and without consideration by the Court.

28 //

1           10. Petitioner shall immediately notify the Court and counsel for  
2 respondents of any change of petitioner's address. If petitioner fails to keep the Court  
3 informed of where petitioner may be contacted, this action will be subject to dismissal  
4 for failure to prosecute. See Local Rule 41-6.

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6 DATED: March 18, 2010

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12 ROBERT N. BLOCK  
13 UNITED STATES MAGISTRATE JUDGE  
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